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6 IN RE: PACIFIC FERTILITY CENTER
7 LITIGATION

8 Case No. 18-cv-01586-JSC
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**14 ORDER RE: PLAINTIFF K.L.'S
15 MOTION FOR VOLUNTARY
16 DISMISSAL**

17 Re: Dkt. No. 536
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25 These consolidated cases arise out of a March 2018 incident involving a cryopreservation
26 tank storing Plaintiffs' eggs and embryos. Plaintiff K.L. was a putative class representative in
27 these consolidated actions. Following the Court's denial of Plaintiffs' motion for class
28 certification, K.L. seeks to voluntarily dismiss her action without prejudice to refiling in state
court where there are approximately 71 individual actions proceeding regarding the same incident.
Chart Industries, the only remaining defendant in this federal action, opposes K.L.'s motion for
voluntary dismissal. Having considered the parties' briefs and having had the benefit of oral
argument on September 3, 2020, the Court GRANTS K.L.'s motion for voluntary dismissal. Chart
has not identified any legal prejudice that it would suffer as a result of a without prejudice
dismissal.

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26 **DISCUSSION**
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K.L. moves to voluntarily dismiss her claims without prejudice to refiling in San Francisco
Superior Court on an individual basis. K.L. seeks to do so because her counsel represents 47
individuals in the state court proceedings and is liaison counsel in those proceedings, but does not

1 represent any other plaintiffs in the federal proceedings. (Dkt. No. 536-1 at ¶ 1.) Thus, it would be
2 much more efficient and less costly for K.L.’s counsel to represent her in state court.

3 K.L. may dismiss her suit only with Court approval because Chart already answered her
4 complaint. *See Fed. R. Civ. P. 41(a)(2)*. The decision to grant a Rule 41(a)(2) voluntary dismissal
5 “is addressed to the sound discretion of the District Court.” *Hamilton v. Firestone Tire & Rubber*
6 *Co.*, 679 F.2d 143, 145 (9th Cir. 1982). Generally, a Rule 41(a)(2) motion for voluntary dismissal
7 should be granted “unless a defendant can show that it will suffer some plain legal prejudice as a
8 result.” *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). Legal prejudice is “prejudice to some
9 legal interest, some legal claim, some legal argument.” *Westlands Water Dist. v. United States*,
10 100 F.3d 94, 97 (9th Cir. 1996). For example, legal prejudice justifying a motion for voluntary
11 dismissal existed “when the dismissal of a party would have rendered the remaining parties
12 unable to conduct sufficient discovery to untangle complex fraud claims and adequately defend
13 themselves against charges of fraud.” *Id.* (citing *Hyde & Drath v. Baker*, 24 F.3d 1162, 1169 (9th
14 Cir. 1994), as amended (July 25, 1994)).

15 Chart contends that it will suffer the legal prejudice of the loss of a federal forum. The
16 Ninth Circuit, however, has held that “plain legal prejudice does not result merely because the
17 defendant will be inconvenienced by having to defend in another forum or where a plaintiff would
18 gain a tactical advantage by that dismissal.” *Smith*, 263 F.3d at 976 (internal quotation marks
19 omitted). In *Smith*, for example, the Ninth Circuit held that the district court did not err in
20 concluding “that the prospect of litigating the first lawsuit in state court does not amount to plain
21 legal prejudice” and that while the defendant “will be obliged to defend the state court action, this
22 does not add an extra burden to [the defendant] because it was already engaged in defending the
23 state court case.” *Id.* (internal quotation marks omitted); *see also Westlands Water Dist.*, 100 F.3d
24 at 97 (holding that mere threat of future litigation, without more, does not constitute legal
25 prejudice). Indeed, in *Zanowick v. Baxter Healthcare Corp.*, the defendants removed the action to
26 federal court based on diversity jurisdiction. The plaintiff subsequently filed a state court action
27 against the same defendants for the same claims, but this time adding a non-diverse defendant.
28 The district court granted the plaintiff’s request for voluntary dismissal without prejudice. The

1 Ninth Circuit upheld the dismissal, rejecting the defendant's argument that the loss of the federal
2 forum amounted to legal prejudice. 850 F. 3d 1090, 1093 n.2 (9th Cir. 2017); *see also Carrillo v.*
3 *Target Corp.*, No. C 17-05693 WHA, 2017 WL 6497244 (N.D. Cal. Dec. 19, 2017) (explaining
4 that in *Zanowick* "our court of appeals explicitly rejected defendant's argument that the loss of a
5 federal forum constituted legal prejudice.")

6 *Westlands Water Dist.*, does not hold otherwise. Chart relies on the court's statement that
7 "in determining what will amount to legal prejudice, courts have examined whether a dismissal
8 without prejudice would result in the loss of a federal forum, or the right to a jury trial, or a
9 statute-of-limitations defense," 100 F.3d. at 97, to support its assertion that the loss of a federal
10 forum constitutes legal prejudice. But all the *Westlands Water District* court observed was that
11 courts have "examined" whether a dismissal would result in the loss of a federal forum—it did not
12 hold that loss of federal forum constitutes legal prejudice. To the contrary, the cases the
13 *Westlands* case cited for the proposition *examined* the loss of federal forum *and upheld the court's*
14 *dismissal without prejudice*. Indeed, Chart does not cite a single case in which a court held that
15 being deprived of a federal forum amounted to legal prejudice.

16 Finally, Chart asks for an award of fees and costs in the event the Court grants K.L.'s
17 motion. "[I]f the district court decides it should condition dismissal on the payment of costs and
18 attorney fees, the defendants should only be awarded attorney fees for work which cannot be used
19 in any future litigation of these claims." *Westlands*, at 97. Chart has not identified any fees and
20 costs it has of yet incurred as to K.L. alone which cannot be used in future state court litigation.

21 CONCLUSION

22 As Chart has not identified any legal prejudice that arises from K.L.'s voluntary dismissal,
23 and as it has not articulated any conditions on dismissal warranted by the circumstances, K.L.'s
24 motion for voluntary dismissal without prejudice is GRANTED.

25 This Order disposes of Docket No. 536.

26 **IT IS SO ORDERED.**

27 Dated: September 3, 2020

United States District Court
Northern District of California

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Jacqueline Scott Corley
JACQUELINE SCOTT CORLEY
United States Magistrate Judge